

AMENDED IN ASSEMBLY APRIL 17, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2541**

---

**Introduced by Assembly ~~Member Matthews~~ *Members Matthews  
and Negrete McLeod***

February 23, 2006

---

An act to amend Sections 927.1, 927.2, 927.3, 927.6, 927.7, 927.10, and 927.11 of the Government Code, relating to claims against the state.

LEGISLATIVE COUNSEL'S DIGEST

AB 2541, as amended, Matthews. Claims against the state.

Existing law requires a state agency that acquires property or services pursuant to a contract with a business to make payment to the person or business on the date required by the contract, and within 45 days of the state agency's receipt of an undisputed invoice, or be subject to a late payment penalty. *The state agency is required to pay to the contractor a late payment penalty of 0.25% of the amount due, per calendar day, from the required payment date, if the contractor is a certified small business, a nonprofit organization, a nonprofit public benefit corporation, or a small business or nonprofit organization that provides services or equipment under the Medi-Cal program, and for all other businesses, a penalty at a rate of 1% above the rate accrued on June 30 of the prior year by the Pooled Money Investment Account, as specified.*

This bill would increase the 0.25% late payment penalty to 1%. The bill additionally would require a state agency that awards a grant, as defined, to make payment to the person or business that is the recipient of the grant on the date required by the grant, and within 45

days of the state agency's receipt of an undisputed invoice, or be subject to a late payment penalty. The bill would make other conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 927.1 of the Government Code is  
2 amended to read:

3 927.1. (a) (1) A state agency that acquires property or  
4 services pursuant to a contract with a business, including any  
5 approved change order or contract amendment, shall make  
6 payment to the person or business on the date required by the  
7 contract and as required by Section 927.4 or be subject to a late  
8 payment penalty.

9 (2) A state agency that awards a grant, as defined in  
10 subdivision (b) of Section 927.2, shall make payment to the  
11 person or business that is the recipient of the grant on the date  
12 required by the grant and as required by Section 927.4 or be  
13 subject to a late payment penalty.

14 (b) Except in the event of an emergency as provided in Section  
15 927.11, effective January 1, 1999, the late payment penalties  
16 specified in this chapter may not be waived, altered, or limited by  
17 either of the following:

18 (1) A state agency acquiring property or services pursuant to a  
19 contract or that awards a grant.

20 (2) Any person or business contracting with a state agency to  
21 provide property or services or that is the recipient of a grant.

22 SEC. 2. Section 927.2 of the Government Code is amended to  
23 read:

24 927.2. The following definitions apply to this chapter:

25 (a) "Claim schedule" means a schedule of invoices prepared  
26 and submitted by a state agency to the Controller for payment to  
27 the named claimant.

28 (b) "Grant" means ~~a~~ *either of the following:*

29 *(1) A solicited or unsolicited proposal of a state agency,*  
30 *including, but not limited to, a request for proposals (RFP) and a*  
31 *request for applications (RFA), to furnish assistance to a*  
32 *nonprofit service organization so that the latter may carry out its*

1 *own program to provide public services. The term shall not*  
2 *include the procurement of goods or services for a state agency*  
3 *nor the acquisition, construction, alteration, improvement, or*  
4 *repair of real property for a state agency.*

5 (2) A signed final agreement between the Office of Emergency  
6 Services and a local government agency or organization  
7 authorized to accept grant funding for victim service programs  
8 administered by the Criminal Justice Programs Division of the  
9 Office of Emergency Services.

10 (c) "Invoice" means a bill or claim that requests payment on a  
11 contract under which a state agency acquires property or services  
12 or pursuant to a grant.

13 (d) "Medi-Cal program" means the program established  
14 pursuant to Chapter 7 (commencing with Section 14000) of Part  
15 3 of Division 9 of the Welfare and Institutions Code.

16 (e) "Nonprofit public benefit corporation" means a  
17 corporation, as defined by subdivision (b) of Section 5046 of the  
18 Corporations Code, that has registered with the Department of  
19 General Services as a small business.

20 (f) "*Nonprofit service organization*" means a nonprofit entity  
21 *that is organized to provide services to the public.*

22 ~~(f)~~

23 (g) "Reasonable cause" means a determination by a state  
24 agency that any of the following conditions are present:

25 (1) There is a discrepancy between the invoice or claimed  
26 amount and the provisions of the contract or grant.

27 (2) There is a discrepancy between the invoice or claimed  
28 amount and either the claimant's actual delivery of property or  
29 services to the state or the state's acceptance of those deliveries.

30 (3) Additional evidence supporting the validity of the invoice  
31 or claimed amount is required to be provided to the state agency  
32 by the claimant.

33 (4) The invoice has been improperly executed or needs to be  
34 corrected by the claimant.

35 (5) The state agency making the determination or the claimant  
36 involved has been subject to a computing or accounting failure  
37 related to the Year 2000 Problem.

38 ~~(g) "Required payment approval date" means the date on~~  
39 ~~which payment is due as specified in a contract or grant or, if a~~  
40 ~~specific date is not established by the contract or grant, 30~~

1 ~~calendar days following the date upon which an undisputed~~  
2 ~~invoice is received by a state agency.~~

3 ~~(h) “Received by a state agency” means the date an invoice is~~  
4 ~~delivered to the state location or party specified in the contract or~~  
5 ~~grant or, if a state location or party is not specified in the contract~~  
6 ~~or grant, wherever otherwise specified by the state agency.~~

7 *(h) “Received by a state agency” means the date an invoice is*  
8 *delivered to the state location or party specified in the contract*  
9 *or grant or, if a state location or party is not specified in the*  
10 *contract or grant, wherever otherwise specified by the state*  
11 *agency.*

12 *(i) “Required payment approval date” means the date on*  
13 *which payment is due as specified in a contract or grant or, if a*  
14 *specific date is not established by the contract or grant, 30*  
15 *calendar days following the date upon which an undisputed*  
16 *invoice is received by a state agency.*

17 ~~(i)~~

18 *(j) “Revolving fund” means a fund established pursuant to*  
19 *Article 5 (commencing with Section 16400) of Division 4 of*  
20 *Title 2.*

21 ~~(j)~~

22 *(k) “Small business” means a business certified as a “small*  
23 *business” in accordance with subdivision (d) of Section 14837.*

24 ~~(k)~~

25 *(l) “Small business” and “nonprofit organization” mean, in*  
26 *reference to providers under the Medi-Cal program, a business or*  
27 *organization that meets all of the following criteria:*

28 *(1) The principal office is located in California.*

29 *(2) The officers, if any, are domiciled in California.*

30 *(3) If a small business, it is independently owned and*  
31 *operated.*

32 *(4) The business or organization is not dominant in its field of*  
33 *operation.*

34 *(5) Together with any affiliates, the business or organization*  
35 *has gross receipts from business operations that do not exceed*  
36 *three million dollars (\$3,000,000) per year, except that the*  
37 *Director of Health Services may increase this amount if the*  
38 *director deems that this action would be in furtherance of the*  
39 *intent of this chapter.*

40 ~~(l)~~

1 (m) “Year 2000 Problem” has the same meaning as that set  
2 forth in subdivision (a) of Section 3269 of the Civil Code.

3 SEC. 3. Section 927.3 of the Government Code is amended to  
4 read:

5 927.3. Except where payment is made directly by a state  
6 agency pursuant to Section 927.6, any undisputed invoice  
7 received by a state agency shall be submitted to the Controller for  
8 payment by the required payment approval date. A state agency  
9 may dispute an invoice submitted by a claimant for reasonable  
10 cause if the state agency notifies the claimant within 15 working  
11 days from receipt of the invoice, or delivery of property or  
12 services, whichever is later. No state employee shall dispute an  
13 invoice, on the basis of minor or technical defects, in order to  
14 circumvent or avoid the general intent or any of the specific  
15 provisions of this chapter.

16 SEC. 4. Section 927.6 of the Government Code is amended to  
17 read:

18 927.6. (a) State agencies shall pay applicable penalties,  
19 without requiring that the claimant submit an additional invoice  
20 for these amounts, whenever the state agency fails to submit a  
21 correct claim schedule to the Controller by the required payment  
22 approval date. The penalty shall cease to accrue on the date the  
23 state agency submits the claim schedule to the Controller for  
24 payment, and shall be paid for out of the state agency’s funds. If  
25 the claimant is a certified small business, a nonprofit  
26 organization, a nonprofit public benefit corporation, or a small  
27 business or nonprofit organization that provides services or  
28 equipment under the Medi-Cal program, the state agency shall  
29 pay to the claimant a penalty of ~~0.25~~ 1 percent of the amount due,  
30 per calendar day, from the required payment date. However, a  
31 nonprofit organization shall only be eligible to receive a penalty  
32 payment if it has been awarded a contract or grant in an amount  
33 less than five hundred thousand dollars (\$500,000).

34 (b) For all other businesses, the state agency shall pay a  
35 penalty at a rate of 1 percent above the rate accrued on June 30 of  
36 the prior year by the Pooled Money Investment Account, not to  
37 exceed a rate of 15 percent, except that, if the amount of the  
38 penalty is seventy-five dollars (\$75) or less, the penalty shall be  
39 waived and not paid by the state agency. On an exception basis,  
40 state agencies may avoid payment of penalties, for failure to

1 submit a correct claim schedule to the Controller by the required  
2 payment approval date, by paying the claimant directly, from the  
3 state agency's revolving fund within 45 calendar days following  
4 the date upon which an undisputed invoice is received by the  
5 state agency.

6 SEC. 5. Section 927.7 of the Government Code is amended to  
7 read:

8 927.7. The Controller shall pay claimants within 15 calendar  
9 days of receipt of a correct claim schedule from the state agency.  
10 If the Controller fails to make payment within 15 calendar days  
11 of receipt of the claim schedule from a state agency, the  
12 Controller shall pay applicable penalties to the claimant without  
13 requiring that the claimant submit an invoice for these amounts.  
14 Penalties shall cease to accrue on the date full payment is made,  
15 and shall be paid for out of the Controller's funds. If the claimant  
16 is a certified small business, a nonprofit organization, a nonprofit  
17 public benefit corporation, or a small business or nonprofit  
18 organization that provides services or equipment under the  
19 Medi-Cal program, the Controller shall pay to the claimant a  
20 penalty of ~~0.25~~ 1 percent of the amount due, per calendar day,  
21 from the 16th calendar day following receipt of the claim  
22 schedule from the state agency. However, a nonprofit  
23 organization shall only be eligible to receive a penalty payment if  
24 it has been awarded a contract or grant in an amount less than  
25 five hundred thousand dollars (\$500,000). For all other  
26 businesses, the Controller shall pay penalties at a rate of 1  
27 percent above the rate accrued on June 30 of the prior year by the  
28 Pooled Money Investment Account, not to exceed a rate of 15  
29 percent, except that, if the amount of the penalty is seventy-five  
30 dollars (\$75) or less, the penalty shall be waived and not paid by  
31 the Controller.

32 SEC. 6. Section 927.10 of the Government Code is amended  
33 to read:

34 927.10. State agencies shall encourage claimants to promptly  
35 pay their subcontractors and suppliers, especially those that are  
36 small businesses. In furtherance of this policy, state agencies  
37 shall utilize expedited payment processes to enable faster  
38 payment by prime contractors to their subcontractors and  
39 suppliers, and shall promptly respond to any subcontractor or

1 supplier inquiries regarding the status of payments made to prime  
2 contractors.

3 SEC. 7. Section 927.11 of the Government Code is amended  
4 to read:

5 927.11. (a) Except in the case of a contract with a certified  
6 small business, a nonprofit organization, or a nonprofit public  
7 benefit corporation, if an invoice from a business under a  
8 contract with the Department of Forestry and Fire Protection  
9 would become subject to late payment penalties during the  
10 annually declared fire season, as declared by the Director of  
11 Forestry and Fire Protection, then the required payment approval  
12 date shall be extended by 30 calendar days.

13 (b) No nonprofit public benefit corporation shall be eligible  
14 for a late payment penalty if a state agency fails to make timely  
15 payment because no Budget Act has been enacted.

16 (c) If the Director of Finance determines that a state agency or  
17 the Controller is unable to promptly pay an invoice as provided  
18 for by this chapter due to a major calamity, disaster, or criminal  
19 act, then otherwise applicable late payment penalty provisions  
20 contained in Section 927.7 shall be suspended except as they  
21 apply to a claimant that is either a certified small business, a  
22 nonprofit organization, a nonprofit public benefit corporation, or  
23 a small business or nonprofit organization that provides services  
24 or equipment under the Medi-Cal program. The suspension shall  
25 remain in effect until the Director of Finance determines that the  
26 suspended late payment penalty provisions of this section should  
27 be reinstated.

28 (d) Except as provided in subdivision (b), in the event a state  
29 agency fails to make timely payment because no Budget Act has  
30 been enacted, penalties shall continue to accrue until the time that  
31 the invoice is paid.